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April 5, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Lockheed Martin Corporation, COMSAT Corporation, and  
Intelsat, Ltd., *et al.* Applications for Consent to Assignment

Dear Mr. Caton:

Enclosed for filing on behalf of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc. (collectively "COMSAT"), together with Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp. (collectively "Intelsat"), are two copies of their applications for consent to the assignment of various Title II authorizations and Title III licenses. This submission is being made in connection with a proposed acquisition by Intelsat of the assets of the COMSAT business unit known as COMSAT World Systems ("CWS").

The proposed acquisition contemplates the assignment of various earth station licenses, business radio licenses, and Section 214 authorizations. The Applicants are concurrently filing the original and appropriate number of the requisite forms for these proposed assignments, together with the necessary fees, via the appropriate FCC lockboxes at the Mellon Bank (or, in the case of Form 603, electronically). This submission includes accurate copies of all the related FCC forms and applications filed under separate cover.

Upon receipt of this submission, please date-stamp the attached copy marked "Stamp & Return" and return it to the undersigned via the messenger. Should any questions arise concerning this submission, kindly contact the undersigned counsel for the Applicants.

Respectfully submitted,

Rosemary C. Harold

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Lockheed Martin Corporation,  
COMSAT Corporation, and  
COMSAT Digital Teleport, Inc.,

Assignors

and

Intelsat, Ltd., Intelsat (Bermuda), Ltd.,  
Intelsat LLC, and Intelsat USA License  
Corp.,

Assignees

Applications for Assignment of  
Earth Station Licenses and  
Section 214 Authorizations

File No.

02-87

APPLICATION FOR CONSENT TO ASSIGNMENTS

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April 5, 2002

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Lockheed Martin Corporation,	)	
COMSAT Corporation, and	)	
COMSAT Digital Teleport, Inc.,	)	
	)	
Assignors	)	
	)	
and	)	File No.
	)	
Intelsat, Ltd., Intelsat (Bermuda), Ltd.,	)	
Intelsat LLC, and Intelsat USA License	)	
Corp.,	)	
	)	
Assignees	)	
	)	
Applications for Assignment of	)	
Earth Station Licenses and	)	
Section 214 Authorizations	)	

**APPLICATION FOR CONSENT TO ASSIGNMENTS**

Lockheed Martin Corporation ("Lockheed Martin"), COMSAT Corporation, and COMSAT Digital Teleport, Inc. (collectively "COMSAT" or "Assignor"), together with Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp. ("Intelsat USA") (collectively "Intelsat" or "Assignee") (jointly "Applicants"), submit this Application under Sections 214, 308, 310(b)(4) and 310(d) of the Communications Act of 1934 to request approval of COMSAT's assignment of certain Title III radio licenses to Intelsat LLC and certain Title II

common carrier authorizations to Intelsat USA.<sup>1</sup> The Applicants seek approval of these assignments in connection with Intelsat's proposed acquisition of the assets of a Lockheed Martin business unit known as COMSAT World Systems ("CWS") and certain associated COMSAT business enterprises.<sup>2</sup>

Today, Intelsat provides communications capacity via the Intelsat satellite fleet, marketed primarily through more than 300 official distributors and wholesale customers and also through

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<sup>1</sup> 47 U.S.C. §§ 214, 310 (2000). The relevant FCC forms and a separate Section 214 application are being filed concurrently with this narrative. In addition, the Applicants request that the Commission treat its consideration of this Application as a "permit but disclose" proceeding for purposes of the agency's *ex parte* rules. See 47 C.F.R. §1.1200 *et seq.* The transaction plays an important role in furthering the transformation of Intelsat into a conventional private satellite company and designation as a permit but disclose proceeding under Section 1.1206 would serve the public interest by enabling the Commission to review the full input from the Applicants and other interested parties, if any, on issues concerning the proposed integration of Intelsat and CWS. Moreover, Intelsat LLC's previous application to acquire U.S. licenses in connection with its privatization was given permit but disclose status by the agency. *Intelsat L.L.C. Satellite Applications Accepted for Filing in the 3.420-4.200 GHz, 5.850-6.650 GHz, 10.950-11.200 GHz, 11.450-12.200 GHz, 12.500-12.750 GHz, 13.750-14.500 GHz Frequency Band*, DA No. 00-192 (Feb. 2, 2000) (Public Notice).

<sup>2</sup> As noted in Attachment 1 and in the FCC Forms 312 and 603 accompanying this filing, several of the licenses that COMSAT proposes to assign to Intelsat are held by COMSAT Digital Teleport, Inc. ("CDTI") and COMSAT General Corporation, subsidiaries of COMSAT Corporation. The proposed sale includes the assignment of the CDTI business, but not that of COMSAT General. In addition to the Form 312 assignment applications, COMSAT is submitting additional requests on Form 312 to modify the common carrier status of some of the earth station facilities that it proposes to assign to Intelsat. These status change requests are associated with the overall transaction, and COMSAT respectfully requests that they be granted in conjunction with the Commission's action on the related assignment applications.

The Applicants also note that separate applications seeking assignment of four earth stations and one experimental facility from COMSAT to Intelsat already are pending before the FCC. *Application of COMSAT Corporation, et al.*, FCC File No. SES-ASG-20010423-00856 (filed April 20, 2001) (concerning earth stations E000296, E010104, E980200, and E990320); FCC File No. 0010-EX-AU-2001 (filed April 20, 2001) (concerning experimental facility WB2XDE). Those applications are not related to the proposed transaction here.

Intelsat's own nascent marketing operation.<sup>3</sup> CWS has extensive experience in providing value-added services to purchasers of Intelsat-based capacity, as well as expertise in marketing, ground services, and network management. Grant of the associated applications will allow an integrated Intelsat to quickly acquire the same operational expertise and customer access that all of its facilities-based rivals in the U.S. international communications marketplace currently possess. Accordingly, the proposed transaction will jump-start Intelsat's marketing of a full range of communications offerings to U.S. customers, ranging from raw space segment capacity to many value-added services. That, in turn, means that Intelsat will be able to be even more responsive to the needs of U.S. customers—thereby benefiting consumers and, ultimately, the public interest.

#### I. DESCRIPTION OF THE APPLICANTS

In any review of a license assignment application, the Commission considers whether the applicants satisfy threshold requirements to assign and hold licenses under Section 310(d) of the Communications Act and the agency's implementing rules. Certain transactions, such as the one here, also may necessitate review under Sections 214 and 310(b)(4).<sup>4</sup> This section demonstrates that Intelsat and COMSAT possess the requisite legal qualifications for the proposed assignment.

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<sup>3</sup> Under the terms of Intelsat's Distribution Agreement, Wholesale Customer Agreement, and Non-Exclusive Customer Service Agreement, both distributors and wholesale customers can—and often do—resell Intelsat capacity as part of the services that they provide to consumers.

<sup>4</sup> As discussed *supra* note 1, the Applicants also seek to assign various Section 214 authorizations, which are the subject of a separate application filed concurrently. To the degree necessary, the information provided in this narrative is duplicated in the Section 214 application; the substantive data remains the same with respect to all the associated applications for the proposed transaction.

#### A. COMSAT Corporation and Affiliated Entities

CWS is a business unit of COMSAT Corporation, a wholly owned subsidiary of Lockheed Martin Global Telecommunications LLC ("LMGT"),<sup>5</sup> which in turn is a wholly owned subsidiary of Lockheed Martin, a publicly traded U.S. company. The CWS line of business provides telecommunications services via the Intelsat satellite system to meet the domestic and international communications needs of customers such as international telecommunications service providers, long-distance carriers, broadcasters, and multinational corporations. In addition to the satellite services business of CWS, the proposed transaction includes related COMSAT teleport services in the United States, which offer interconnections for voice, video, and data services.

To support the CWS and teleport businesses, COMSAT and certain of its subsidiaries hold in good standing several FCC Title III licenses and Section 214 authorizations, details of which are provided at Attachment 1. Upon the closing of the proposed transaction, the operating assets of CWS and related COMSAT entities—including the licenses and authorizations at issue here—will be assigned to one of several wholly owned Intelsat subsidiaries. The relevant

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<sup>5</sup> Lockheed Martin has announced plans to exit the business of providing commercial global telecommunications services, but LMGT currently remains in existence as a corporate entity. As part of the planned dissolution of LMGT, Lockheed Martin will retain several LMGT units—including COMSAT General Corporation ("COMGEN")—but move them elsewhere within Lockheed Martin's corporate structure. Accordingly, COMGEN and Lockheed Martin Corporation are filing a *pro forma* application for transfer of control of all COMGEN licenses from COMSAT Corporation to Lockheed Martin Corporation. This *pro forma* transfer is independent of, and will have no substantive effect on, the proposed transaction here. Lockheed Martin and COMSAT anticipate that the *pro forma* transfer will be approved shortly. Of the approximately 17 total COMGEN licenses in various services, five of them—all earth station licenses—are ultimately being assigned to Intelsat as part of this application. The Applicants here will promptly notify the FCC staff processing this application when the COMGEN *pro forma* transaction is completed.

subsidiaries for purposes of this application are Intelsat LLC, which will receive the Title III licenses, and Intelsat USA, which will receive the Section 214 authorizations.

**B. Intelsat LLC, Intelsat USA, and Affiliated Intelsat Entities**

**1. Corporate Organization and Lines of Business**

Intelsat owns and operates a global satellite system that provides space segment capacity used for a wide array of communications services, including voice, video, data, and Internet connections. Intelsat's fleet of satellites offers service in more than 200 countries, serving customers that range from large telecommunications carriers and broadcasters to corporate networks and Internet service providers. Intelsat's customers include distributors such as COMSAT that resell capacity, as well as customers that purchase capacity for their own use. Intelsat has relatively limited distribution infrastructure, nascent network management skills and, until recently, had no licenses to operate ground stations.<sup>6</sup> The proposed transaction is largely complementary because it will combine the Intelsat space segment capacity with the CWS downstream distribution infrastructure.

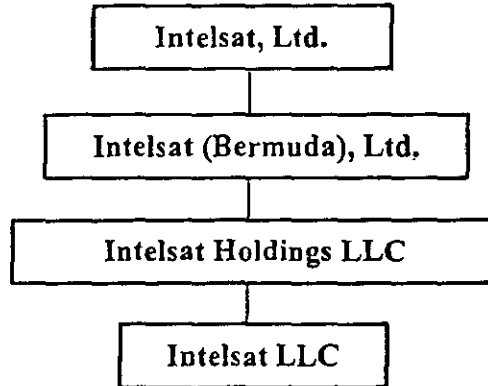
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<sup>6</sup> See *Intelsat Announces Strategic Acquisitions in First Step for Delivering New Wholesale Global Connectivity Solutions*, available at < <http://www.intelsat.com/news/releases/press/2002-07e.asp> > (visited March 26, 2002) (announcing acquisition of teleport in Germany). Licenses for Intelsat's German teleport have just been granted. Also, as indicated *supra* note 2, applications already are pending before the Commission that seek the assignment of certain U.S. earth station facilities from COMSAT to Intelsat.



The proposed ownership structure for both the Title III licenses and Section 214 authorizations is nearly identical. The corporate structure of the proposed Title III licensee is set forth below:

PROPOSED TITLE III LICENSEE



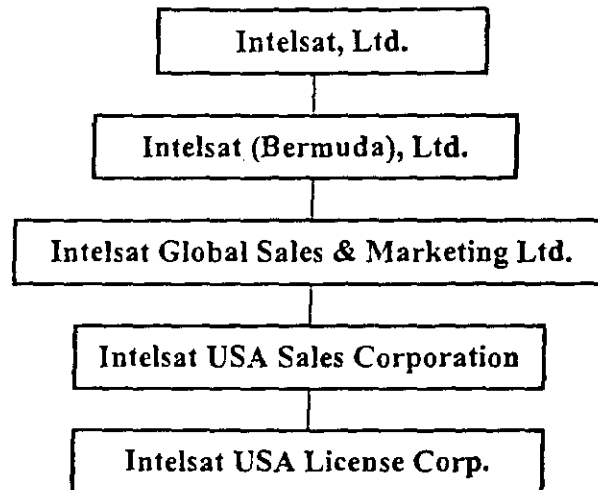
Intelsat LLC, the proposed Title III licensee in this transaction, already holds the Intelsat satellite licenses. It is a Delaware limited liability company with a holding company ownership structure common to U.S.-licensed international satellite systems.<sup>7</sup> Intelsat LLC is wholly owned and controlled by Intelsat Holdings LLC ("Intelsat Holdings"), also a Delaware limited liability company. Intelsat Holdings, in turn, is wholly owned by Intelsat (Bermuda), Ltd., a company incorporated under the laws of Bermuda. Intelsat (Bermuda), Ltd. is wholly owned by Intelsat, Ltd., also a company incorporated under the laws of Bermuda.

The structure for the holding of the common carrier authorizations is as follows:

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<sup>7</sup> A number of U.S.-licensed international telecommunications companies are organized as holding companies, including Loral Space and Communications Limited and SES Global, S.A.

## PROPOSED HOLDER OF SECTION 214 AUTHORIZATIONS



Intelsat USA, the proposed holder of the Section 214 authorizations in this transaction, is a Delaware corporation with a U.S. holding company ownership structure similar to that of Intelsat LLC. Intelsat USA is wholly owned and controlled by Intelsat USA Sales Corporation, a Delaware corporation. Intelsat USA Sales Corporation, in turn, is wholly owned by Intelsat Global Sales & Marketing Ltd., a company incorporated under the laws of England and Wales. Intelsat Global Sales & Marketing Ltd., in turn, is wholly owned by Intelsat (Bermuda), Ltd., which itself is a wholly owned subsidiary of Intelsat, Ltd.; as noted above, the latter two entities are both Bermuda companies.

### **2. Ownership**

The proposed Assignee of the Title III licensees and the proposed Assignee of the Section 214 authorizations are both wholly owned, indirect U.S. subsidiaries of Intelsat, Ltd., a Bermuda entity. In contrast to most recent acquisitions involving foreign ownership interests that have come before the Commission, the FCC already has approved—and reconfirmed—the basic corporate structure and specific foreign ownership interests of the acquiring party under Section

310(b)(4).<sup>8</sup> Indeed, the agency has done so several times since 2000, when it first approved the issuance of U.S. space station licenses to the same Intelsat subsidiary now proposed to hold the earth station licenses.<sup>9</sup> Consequently, the qualification of Intelsat LLC to hold these additional licenses is beyond question. Furthermore, the proposed licensee ownership structure mirrors those recently approved in the *Deutsche Telekom/VoiceStream*, *GE/SES Global*, and

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<sup>8</sup> In reviewing proposed assignments that involve indirect foreign control of a U.S. common carrier licensee, the Commission relies on Section 310(b)(4). 47 U.S.C. § 310(b)(4) (2000). *Application of VoiceStream Wireless Corp., Poertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, 16 FCC Rcd. 9779 (2001) (Memorandum Opinion and Order) ("*Deutsche Telekom/VoiceStream Order*"); *Application of General Electric Capital Corp. and SES Global for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214(a) and 310(d) of the Communications Act*, 16 FCC Rcd. 17575 (2001) (Order and Authorization) ("*GE/SES Global Order*"); *Lockheed Martin Global Telecommunications, Comsat Corp., and Comsat General, Corp., Assignor, and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee; Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b) of the Communications Act*, 16 FCC Rcd. 22897 (2001) (Order and Authorization) ("*Telenor/COMSAT Order*"). That provision gives the FCC authority to consent to assignments in cases concerning more than 25 percent indirect foreign ownership when the agency determines that the public interest would not be harmed by the transaction.

<sup>9</sup> See, e.g., *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, 15 FCC Rcd. 15460 (2000) (Memorandum Opinion Order and Authorization) ("*Intelsat Licensing Order*"); see also *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, 15 FCC Rcd. 25234 (2000) (Order and Reconsideration); *Applications of Intelsat LLC for Authority to Operate, and Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, 16 FCC Rcd. 12280 (2001) (Memorandum Opinion Order and Authorization) ("*Intelsat Privatization Order*"); *Application of Intelsat LLC to Modify Authorizations*, SAT-MOD-20011221-00140 (filed Dec. 21, 2001) (stamp grant by Jennifer Gilsenan, FCC, issued Mar. 22, 2002). As noted above, Intelsat USA, the proposed holder of the Section 214 authorizations, is a sister subsidiary of Intelsat LLC with an almost identical corporate structure.

*Telenor/COMSAT* merger proceedings.<sup>10</sup> Thus, there can be no legitimate question whether the common carrier earth station license applications satisfy the structural requirements of Section 310(b)(4).

The proposed transaction does not affect Lockheed Martin's current ownership stake in Intelsat, Ltd. Consequently, upon closure of the transaction, Lockheed Martin still will be by far the largest single shareholder in the company. A U.S. corporation, Lockheed Martin holds approximately 24.05 percent of the total Intelsat, Ltd. shares through COMSAT Corporation and related COMSAT business entities.<sup>11</sup>

The remaining ownership interests in Intelsat are widely dispersed among more than 220 entities, representing more than 145 nations. In the relatively short time since the FCC granted satellite licenses to Intelsat LLC, the ownership of Intelsat has not materially changed.<sup>12</sup> A listing of ownership interests is provided at Attachment 2.<sup>13</sup>

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<sup>10</sup> *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd. 9779; *GE/SES Global Order*, 16 FCC Rcd. 17575; *Telenor/COMSAT Order*, 16 FCC Rcd. 22897.

<sup>11</sup> Lockheed Martin's decision to exit the business of providing global commercial telecommunications services has not affected its investment interest in Intelsat; in fact, Lockheed Martin's ownership share in Intelsat has increased slightly since the FCC issued the *Intelsat Licensing Order* in August 2000.

<sup>12</sup> For example, the aggregate level of foreign government ownership does not exceed the approximately 30 percent level reflected in the *Intelsat Licensing Order*. 15 FCC Rcd. at 15480; see also Attachment 2.

<sup>13</sup> Although it may not be necessary to provide this information given the FCC's previous grant of U.S. satellite licenses to Intelsat, the Applicants are providing these details in response to recent FCC directives requiring merger applicants to provide "comprehensive and detailed information concerning the ... voting and equity interests held by non-U.S. interest holders." *Application of General Electric Capital Corp. Transferors, SES Global, S.A. Transferees, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, 16 FCC Rcd. 18878, 18881-82 (2001) (Supplemental (Continued...))

### 3. Technical and Financial Qualifications

Intelsat is financially and technically qualified to hold the FCC licenses necessary to operate the CWS business. As noted above, Intelsat, Ltd., the indirect sole owner of both Intelsat LLC and Intelsat USA, is a leading global supplier of satellite capacity used for the provision of voice, video, and data communications. For more than 30 years, Intelsat (and its predecessor INTELSAT, the intergovernmental treaty organization, or "IGO") has participated in all aspects of the international satellite communications business from system development to launch processing and network operations. The proposed Assignees will be able to draw on this experience and expertise in the operation and future evolution of Intelsat's business. In addition, Intelsat's annual sales revenue of approximately \$1.1 billion provides solid assurance that the company is financially qualified to operate the CWS business through Intelsat LLC and Intelsat USA.

## II. DESCRIPTION OF THE TRANSACTION

The Applicants seek approval for the assignment to Intelsat LLC and Intelsat USA of the licenses and authorizations that support the CWS business. This proposed assignment is made in conjunction with the purchase by Intelsat (Bermuda), Ltd. of substantially all the assets of CWS from the Assignor. The contemplated acquisition would occur under the terms of an Asset

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(...Continued)

Order). The Commission already has determined, however, that as a result of privatization Intelsat retains no privileges or immunities that once attended the old intergovernmental organization. *Intelsat Privatization Order*, 16 FCC Rcd. at ¶ 29. The data provided in Attachment 2 includes each shareholder entity's nationality, the status of the home country's membership in the World Trade Organization ("WTO"), and the percentage of government ownership, if any.

Purchase Agreement entered into on March 15, 2002 by and among COMSAT Corporation, COMSAT Digital Teleport, Inc., and Intelsat (Bermuda), Ltd.

All of the Intelsat entities in the proposed ownership structure ultimately are 100 percent owned by Intelsat, Ltd. Intelsat Holdings LLC wholly owns Intelsat LLC, which will hold the earth station and business radio licenses. Intelsat USA Sales Corporation wholly owns Intelsat USA, which will hold the Section 214 authorizations. A separate operating company, Intelsat Global Service Corporation, a Delaware corporation (and another wholly owned subsidiary of Intelsat (Bermuda), Ltd.), will hold title to the earth station facilities and equipment, as well as the real estate in Clarksburg, Maryland, and Paumalu, Hawaii, being acquired in this transaction. When the proposed transaction is completed, the business and assets of CWS and the related COMSAT assets will transfer to Intelsat LLC and its affiliated entities.

### **III. FCC LICENSES AND AUTHORIZATIONS TO BE ASSIGNED**

#### **A. Current Licenses and Authorizations**

COMSAT holds various FCC licenses and authorizations that will be assigned to Intelsat upon completion of the proposed transaction. Specifically, COMSAT proposes to assign certain Title III licenses for earth stations and business radio facilities, as well as Section 214 authorizations, as described in the relevant applications submitted in conjunction with this filing. A current list of the affected COMSAT licenses and authorizations is provided in Attachment 1.

#### **B. Request for Approval of Additional Authorizations**

While the applications for approval of these assignments are intended to be complete, the licensees involved in this proposed transaction may have on file, and may file for, additional authorizations for new or modified facilities that the FCC may grant during the pendency of the

assignment applications. Accordingly, Applicants request that the grant of the assignment applications include authority for assignment to Intelsat of:

- (1) any authorization issued to COMSAT/CWS during the pendency of the Commission's consideration of the assignment applications or during the period required for consummation of the assignment following approval; and
- (2) applications that will have been filed by COMSAT/CWS and that are pending at the time of consummation of the proposed assignment, including requests for special temporary authority concerning a new or existing facility associated with this transaction.

Such action would be consistent with prior Commission decisions.<sup>14</sup>

#### **IV. THE PROPOSED ASSIGNMENT SATISFIES THE COMMISSION'S PUBLIC INTEREST CRITERIA**

The proposed acquisition of CWS by Intelsat merits approval under Sections 214, 310(b)(4) and 310(d) of the Communications Act. The Commission recently affirmed Intelsat's qualifications as a licensee. The FCC also has concluded (in accord with U.S. commitments under the WTO Agreement) that Intelsat is entitled to the presumption that its indirect acquisition of additional U.S.-licensed communications facilities will serve the public interest by "enhancing investment in the U.S. marketplace" without harming competition.<sup>15</sup>

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<sup>14</sup> *Telenor/COMSAT Order*, 16 FCC Rcd. 22897; *PacifiCorp Holdings, Inc. Transferor, and Century Telephone Enterprises, Inc. Transferee, For Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, 13 FCC Rcd. 8891, 8915-16 (1997) (Memorandum Opinion and Order) ("*PacifiCorp-Century Order*"); *Pacific Telesis Group Transferor, and SBC Communications, Inc. Transferee, For Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, 12 FCC Rcd. 2624, 2665 (1997) (Memorandum Opinion and Order) ("*SBC-PacTel Order*").

<sup>15</sup> *Intelsat Licensing Order*, 15 FCC Rcd. at 15482. See also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market and Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd. 23891, 23896 (1997) (Report and Order and Order on Reconsideration) ("*Foreign Participation Order*").

Furthermore, the facts demonstrate that the presumption is fully warranted because the proposed transaction easily satisfies the Commission's general public interest standard. The discussion below shows that Intelsat, by acquiring the assets and expertise of CWS, will accelerate its development as an efficient competitor—with the ability to market a full range of communications services closely tailored to customer needs. In so doing, Intelsat will acquire the same operational capabilities as its facilities-based rivals, and move beyond the vestiges of government-imposed structural constraints of the past. Jump-starting Intelsat's competitive development will advance longstanding U.S. policy goals, in addition to assisting the company to rapidly respond to the fierce competition posed by its rivals. (Several of these enjoy the efficiencies generated by FCC-approved mergers that, unlike this transaction, involved the consolidation of two satellite system operators.) After the acquisition, customers will continue to be able to select from among a wide range of competitive providers to serve their international communications needs. Their options still will include numerous other satellite systems and fiber-optic cables—as well as other resellers of Intelsat capacity. Intelsat's improved ability to offer an expanded menu of satellite services will only enhance the dynamic competition in the U.S. international communications marketplace.

**A. The Assignment Will Deliver Significant Benefits to U.S. Consumers without Harming Competition**

Sections 214(a) and 310(d) of the Communications Act require applicants seeking Commission consent to an assignment of FCC licenses and authorizations to demonstrate that a



grant would be consistent with the "public interest, convenience and necessity."<sup>16</sup> When reviewing applications concerning a merger or acquisition, the FCC considers four factors:

(1) whether the transaction would result in a violation of the Communications Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act, or would interfere with the objectives of the Communications Act or other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.<sup>17</sup>

As set forth above in Section I.B, Intelsat LLC and Intelsat USA possess all the requisite legal qualifications to hold FCC licenses and authorizations. The transaction, therefore, does not violate any applicable statutory or regulatory provision. For the same reasons and for those set forth in greater detail below, a grant of these applications would pose no impediment to Commission enforcement of the Communications Act or any of the goals underlying relevant statutes. Consequently, the proposed assignment satisfies the first three factors of the Commission's public interest analysis.

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<sup>16</sup> 47 U.S.C. §§ 214(a), 310(d) (2000).

<sup>17</sup> *ICO-Teledesic Global Limited Application for Transfer of Control of Space Station License of Teledesic LLC to ICO-Teledesic Global Limited*, 16 FCC Rcd. 6403 (2001) (Memorandum Opinion Order and Authorization) (citing *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, 15 FCC Rcd. 9816, 9820-21 (2000) (Memorandum Opinion and Order) ("AT&T-MediaOne Order")). See also, e.g., *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation Applications for Transfer of Control of COMSAT Corporation*, 15 FCC Rcd. 22910, 22915 (2000) (Order and Authorization) ("Lockheed Martin/COMSAT Order"); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd. 6547, 6555 (2001) (Memorandum Opinion and Order) ("AOL-Time Warner Order") (citing *AT&T-MediaOne Order*, 15 FCC Rcd. at 9820-21); *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, 14 FCC Rcd. 14712, 14737-38 (1999) (Memorandum Opinion and Order) ("SBC-Ameritech Order").

The remaining factor in the Commission's review—the "public interest" prong of the test—has been construed as requiring the agency to weigh "the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that the Applicants have demonstrated that, on balance, the proposed transaction serves the public interest and convenience."<sup>18</sup> In transactions involving telecommunications providers, the FCC's public interest analysis focuses on the effect the proposed merger or acquisition would have on competition in the relevant market(s). The discussion below shows that there is no risk of competitive harm in this case that could possibly outweigh the benefits of the proposed transaction.

**1. The FCC Already Has Determined That Intelsat Is Entitled to the Presumption That Its Expanded Entry into the U.S. Marketplace Is in the Public Interest**

When undertaking a competition analysis that involves indirect foreign ownership, the Commission begins by considering whether the acquiring entity deserves the benefit of a favorable presumption stemming from U.S. market-opening commitments under the WTO Agreement on Basic Telecommunications Services.<sup>19</sup> In implementing those commitments, the Commission has adopted a strong presumption that indirect foreign ownership of telecommunications companies by entities from WTO countries serves the public interest by

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<sup>18</sup> *AOL-Time Warner Order*, 16 FCC Rcd. at 6554 (citing *SBC-Ameritech Order*, 14 FCC Rcd. at 14736); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation*, 13 FCC Rcd. 18025, 18031-32 (1998) (Memorandum Opinion and Order) ("*MCI-WorldCom Order*").

<sup>19</sup> *Foreign Participation Order*, 12 FCC Rcd. at 23896, 23913, 23940 (implementing U.S. commitments by adopting rebuttable presumption that foreign investment by entity from WTO-member countries generally raises no competitive concerns).

strengthening investment in—and thus the competitiveness of—the U.S. telecommunications marketplace.<sup>20</sup>

As noted above, in earlier orders approving Intelsat LLC as a U.S. satellite licensee, the Commission already has determined that Intelsat is fully entitled to the benefit of this presumption.<sup>21</sup> There is no reason to depart from that precedent here. At the time of the *Intelsat Licensing Order*, approximately 91 percent of Intelsat shares were held by entities that had their principal place of business in nations that belong to the WTO.<sup>22</sup> The only relevant changes that have since occurred have resulted in an increased degree of WTO adherence by Intelsat owners: entities from WTO countries currently hold approximately 97.3 percent of Intelsat shares.<sup>23</sup>

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<sup>20</sup> *Id.*, at 23940.

<sup>21</sup> *Intelsat Licensing Order*, 15 FCC Rcd. at 15482. The Commission further found that because the 9 percent non-WTO member ownership was well below the 25 percent statutory benchmark, there was no need to review the ownership of Intelsat LLC under the “effective competition opportunities” (“ECO”) test set forth in the *Foreign Participation Order*. *Id.* The percentage of non-WTO member ownership has since fallen to just 2.7 percent. See Attachment 2.

<sup>22</sup> *Intelsat Licensing Order*, 15 FCC Rcd. at 15480.

<sup>23</sup> See Attachment 2. Moreover, because the Commission makes no distinction between government and private interests in granting the presumption to entities from WTO Member countries, the fact that several of Intelsat’s foreign investors are government entities or have some government ownership is not relevant under *Deutsche Telekom* precedent—a determination that the agency repeatedly has reaffirmed in later cases. *GE/SES Global Order*, 16 FCC Rcd. at 17591 (citing *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd. at 9811); *Telenor/COMSAT Order*, 16 FCC Rcd. at 22910-11. Nevertheless, the Applicants note that the aggregate level of foreign government interest in Intelsat is no higher than that reflected in the *Intelsat Licensing Order*: about 30 percent. Furthermore, just over 28 percent of the total ownership interest in Intelsat is held by governments affiliated with the WTO.

In addition, consistent with the FCC’s *Intelsat Licensing* precedent, the fact that the Applicant is indirectly owned by a Bermuda holding company raises no public interest concerns. The State Department has concluded that the Agreement establishing the World Trade Organization applies to Bermuda, a dependent overseas territory of the United Kingdom, and the

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Because the proposed transaction merits the presumption that it will serve the public interest, any objections to the applications would face a steep legal hurdle: the presumption can be overcome only if an objecting party could demonstrate that granting the applications would pose a "very high risk to competition" in the relevant markets.<sup>24</sup> As discussed below, Intelsat's acquisition of CWS can pose no appreciable risk of competitive restriction, much less a "very high" one.

**2. Consistent with the Policy Goals Embodied in the ORBIT Act, the Assignment Will Speed the Transformation of Intelsat into a Conventional Commercial Satellite Entity Better Able to Compete as an Efficient Service Provider**

U.S. policymakers have worked for years to transform Intelsat from an IGO into a competitor that would function like its private-sector rivals—because they understood that this change would allow Intelsat to better react to market forces and, thus, more fully benefit U.S. consumers. The recent privatization of Intelsat was a critical milestone in this transformation. The transaction proposed here represents another key step in support of that objective—and one which should bolster Intelsat's upcoming Initial Public Offering ("IPO").

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Commission already has determined that it will defer to the opinion of the State Department in this matter. See *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules between the United States and Bermuda*, 15 FCC Rcd. 3050, 3052 (2000) (Order Authorization and Certificate); see also *ARCOS-1 UAS, Inc., Application for Authority for a Transfer of Control of a Cable Landing License*, 15 FCC Rcd. 17943 (2000) (Memorandum Opinion and Order).

<sup>24</sup> *Foreign Participation Order*, 12 FCC Rcd. at 23898.

a) **Intelsat and COMSAT historically held different roles in the marketplace**

The current marketplace positions of Intelsat and COMSAT largely reflect their regulatory history. Intelsat's status as a facilities-based capacity provider and COMSAT's position as a distributor are the direct consequence of a historical division of business activities that dates back to the 1960s, when the structure and functioning of the two entities was dictated by treaty and U.S. law and regulation rather than by market forces. For this historical reason, the IGO INTELSAT (both in the U.S. and elsewhere) primarily developed relationships with its Signatories, which used INTELSAT's capacity in their direct relationships with their customers. Unlike the situation in the United States, the Signatory in most countries was (until more recent times) a government-owned, vertically integrated PTT. COMSAT, on the other hand, served a unique role. A private U.S. company, COMSAT had an exclusive franchise to sell INTELSAT capacity for use in transmitting communications to and from the United States, but COMSAT's carrier-customers provided the switched telephony services to consumers. COMSAT in recent decades also competed in the marketplace for U.S. customers against fiber-optic cable systems and other satellite systems—and even to some degree with at least one other INTELSAT Signatory, Teleglobe.<sup>25</sup>

Thus, while INTELSAT operated the satellite facilities, COMSAT sold INTELSAT-based services to U.S. customers, forging strong customer relationships in the process. Within the last three years, statutory and regulatory changes led to the elimination of COMSAT's exclusive right to sell Intelsat capacity for U.S. international traffic. Today, Intelsat has the legal

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<sup>25</sup> Teleglobe, when it served as Canada's Signatory, used INTELSAT capacity to carry traffic that originated or terminated in the United States. That practice has continued since  
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authority to provide capacity in the United States through any number of official resellers—including but not limited to COMSAT itself—as well as through direct relationships with U.S. customers. COMSAT continues to serve as a primary U.S. distributor of Intelsat capacity and provider of many ground services, network management services, and other value-added services that incorporate that capacity. Intelsat has continued to focus on the provision of raw space segment capacity. As explained below, combining CWS' sales, marketing, and customer service expertise with the Intelsat facilities will enable Intelsat to quickly become more efficient and thereby better able to offer enhanced, high-quality services to U.S. customers. Those customers will be able to obtain directly from Intelsat the full array of services, from raw capacity to value-added offerings, now offered by CWS.

**b) The transaction is fully consistent with policy objectives embodied in the ORBIT Act**

U.S. policymakers strongly supported the pro-competitive privatization of the Intelsat system, now embodied in U.S. law through the ORBIT Act,<sup>26</sup> as key to fulfilling the important goals of promoting competition and bringing consumers improved services. Specifically, in advocating privatization, Congress emphasized the importance of transforming Intelsat into “a commercial structure comparable to that of any of the existing satellite entities.”<sup>27</sup> Lawmakers similarly recognized that dramatic growth in the level of competition “necessitate[d] adaptation

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privatization.

<sup>26</sup> *Open Market Reorganization for the Betterment of International Telecommunications Act*, Pub. L. No. 106-180, 114 Stat. 48 (March 17, 2000) (“ORBIT Act”).

<sup>27</sup> *Open-Market Reorganization for the Betterment of International Telecommunications Act*, Report of the Committee of Commerce, Science, and Transportation on S. 376, S. Rep. No. 106-100, at 1-2 (1999) (“ORBIT Act S. 376”).

of [the] nation's satellite laws to a new policy framework that more accurately reflects the burgeoning international satellite communications marketplace of the 21<sup>st</sup> century."<sup>28</sup> Congress anticipated that this transformation would bring about a "fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services"<sup>29</sup> and that its benefits would include "provid[ing] consumers with better and more product for their dollar."<sup>30</sup> Enabling Intelsat to react to the exigencies of the market and make decisions on growth and investment like any of its competitors fulfills congressional intent.

The Commission similarly foresaw that a conventionally reshaped Intelsat would be "a more effective competitor" with "more commercial flexibility to competitively respond to market changes and customer demands."<sup>31</sup> Likewise, the agency recognized that privatization "would eliminate [Intelsat's] cumbersome decision-making process, giving it "greater flexibility to respond to consumer demand in a manner similar to its private competitors."<sup>32</sup> Thus, both Congress and the Commission have recognized that permitting Intelsat to operate like a normal competitor subject to market forces is key to its competitive success—and thus its contribution to the overall industry's delivery of the best possible services to the U.S. public. In this case, market forces call for the integration of Intelsat's satellite capacity and the provision of CWS

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<sup>28</sup> *Id.*, at 2.

<sup>29</sup> ORBIT Act, Pub. L. 106-180, §1.

<sup>30</sup> ORBIT Act S. 376, S. Rep. No. 106-100, at 6.

<sup>31</sup> *Intelsat Licensing Order*, 15 FCC Rcd. at 15472.

<sup>32</sup> *Id.*

value-added services that utilize that capacity; not surprisingly, this is the same business organization that all of Intelsat's commercial rivals have employed.

As the FCC knows, Intelsat to date has achieved several U.S. policy objectives. The company already has fulfilled key goals by meeting the licensing criteria set forth in the ORBIT Act. It has become a private company. It enjoys no residual privileges or immunities derived from its former status as an IGO. It is led by officers and directors who have enforceable fiduciary responsibilities to shareholders. And it is actively planning for its IPO, which will be conducted later this year—and will thereby further broaden the company's ownership profile.<sup>33</sup> Approval of its proposed integration of CWS will further U.S. policy goals by enabling Intelsat's market-driven transformation into a full-service commercial operator similar to its competitors.

**c) The transaction will produce substantial pro-competitive benefits**

The proposed transaction will further the goals underlying the ORBIT Act by advancing Intelsat's evolution as a competitor subject to, and responsive to, the same market forces that have shaped all of its rivals. Today, the majority of Intelsat's business continues to be providing space segment capacity to a number of distributors and wholesale customers who, in turn, provide various satellite-based services to carriers and an array of other customers. Intelsat only recently has begun to gain experience in providing capacity directly to carriers and other customers in this country. COMSAT remains the leading, though far from exclusive, provider of

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<sup>33</sup> See *Intelsat Announces Strategic Acquisitions in First Step for Delivering New Wholesale Global Connectivity Solutions*, available at < <http://www.intelsat.com/news/releases/press/2002-07e.asp> > (visited March 26, 2002). As noted above, an integrated company, as contemplated in this transaction, likely will be a more attractive prospect for investors in the current economic climate.



value-added Intelsat-based services within the United States.<sup>34</sup> Approval of the proposed transaction will allow for the beneficial evolution of the two entities.

By combining Intelsat's longstanding experience in providing raw space segment capacity with COMSAT's marketing acumen, ground services, and network management services, the combined enterprise will be able to more quickly take advantage of the same business efficiencies that its competitors now enjoy. The integration will promote competition by enabling Intelsat to supply services it would not otherwise be able to perform to a significant extent in the near term. Acquiring CWS' expertise and assets will fill the void in Intelsat's structure while avoiding the inefficiencies inherent in the costly and time-consuming alternative process of building a full set of marketing capabilities, ground facilities, and network management services from scratch. This efficiency will allow Intelsat to become an integrated service provider more quickly, unleashing it to compete more efficiently and effectively with its major integrated rivals such as PanAmSat, Loral/Orion, SES Global, and other facilities-based providers. For example:

- As an IGO, Intelsat was barred by law from holding U.S. earth station licenses to transmit communications services to and from satellites. Because of the huge expense of constructing its own teleport facilities, Intelsat as a private entity has continued to rely on COMSAT and other entities to supply these facilities. The proposed transaction would give Intelsat vital in-house capability to offer earth station services, thereby greatly facilitating its ability to meet the needs of end-user customers by providing a full range of value-added services. As the Commission has noted elsewhere, the lack of an ability to offer such "one-stop shopping" options is considered a significant handicap

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<sup>34</sup> As noted *infra* notes 56-58 and accompanying text, a number of official distributors and wholesale customers have the legal right to offer Intelsat capacity within the United States, and are actively serving U.S. customers.

in the marketplace,<sup>35</sup> and essentially all of Intelsat's competitors provide such services.

- Intelsat also lacks earth stations of its own to provide the telemetry, tracking and control ("TT&C") services needed to operate its satellite fleet; it has relied on COMSAT (and other former Signatories in other countries) to provide these fundamental necessities under contract. Bringing TT&C in-house will allow for more efficient operation by allowing Intelsat the flexibility to define the parameters of these services without having to operate within the confines of the contractual relationship.
- CWS has expertise in, and substantial resources devoted to, assisting its customers in managing their rapidly fluctuating circuit needs. To meet its customers' very complex and constantly changing traffic patterns, CWS provides invaluable remapping services that advise them on how to most efficiently adjust their circuit commitments and to avoid purchasing unneeded capacity.

Market forces plainly have determined that the integrated organizational form proposed here is the most efficient structure for operating a facilities-based communications business; to the Applicants' knowledge, all of Intelsat's facilities-based rivals already offer services in this fashion. Accordingly, approving this transaction will allow Intelsat to keep pace with its powerful and resourceful competitors.

Over the past several years, the Commission has approved a number of mergers or acquisitions between conventional satellite entities that allowed for the combination of formerly separate systems—as opposed to the transaction here, which simply contemplates the integration

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<sup>35</sup> See, e.g., *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 16 FCC Rcd. 6005, 6036 (2001) (Seventh Annual Report) (noting that cable operators that provide multi-service offerings can "add[] the value of one-stop shopping" for consumers and "lower [their] marginal risk"); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses*, 14 FCC Rcd. 14712, 14842 (1999) (Memorandum Opinion and Order) (noting applicants' need to "possess and offer a full suite of services" and acknowledging that applicants are "disadvantaged in their ability to respond to requests for one-stop shopping capabilities due to, among other factors, interLATA restrictions").

of one system with one of its many resellers. For example, just six months ago, the Commission permitted SES Global to acquire the satellite fleets of both GE Americom and Columbia Communications Corporation, thereby allowing for the creation of a much larger, integrated fleet with worldwide coverage and substantially enhanced economies of scale and scope.<sup>36</sup> Similarly, the agency's approval of the merger of Loral Space & Communications Ltd. and Orion Network Systems, Inc. in 1998 created "a global satellite network capable of providing integrated satellite communication services throughout the world."<sup>37</sup> In granting the merger application of Hughes and PanAmSat in 1997, the FCC permitted the creation of what eventually became the world's largest satellite entity.<sup>38</sup> Now, by allowing Intelsat to evolve more quickly into the same operational structure as these and other formidable rivals, the Commission will advance the public interest by strengthening the competitive playing field.

**3. The Transaction Will Have No Negative Impact on Competition in the Competitive U.S. International Marketplace**

The proposed acquisition of CWS by Intelsat will not harm competition. FCC records across many recent proceedings are replete with data demonstrating that many satellite- and

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<sup>36</sup> *GE/SES Global Order*, 16 FCC Rcd. at 17576, 17597.

<sup>37</sup> *Loral Space & Communication Ltd. and Orion Network Systems, Inc. Application for Transfer of Control of Various Space Station, Earth Station, and Section 214 Authorizations*, 13 FCC Rcd. 4592, at 4595 (1998) (Order and Authorization). As the Commission is aware, Loral's Global Alliance encompasses a large range of satellite facilities, including those of Satmex. *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation; Applications for Transfer of Control of COMSAT Corporation and Its Subsidiaries*, 15 FCC Rcd. 22910, 22911 & n. 10 (2000) (Order and Authorization).

<sup>38</sup> *Hughes Communications, Inc. and Anselmo Group Voting Trust/PanAmSat Licensee Corp. Application for Transfer of Control and/or Assignment of Various Space Station, Earth Station, and Section 214 Authorizations*, 12 FCC Rcd. 7534 (1997) (Order and Authorization).

cable-based rivals compete vigorously for U.S. customers—and do so aggressively because of the capacity now available to accommodate new business. Because the Intelsat and CWS operations still reflect the historical division of their roles as a satellite capacity provider and a distributor of services incorporating that capacity, the actual overlap between the two entities today is relatively slim. More to the point, it is *de minimis* in comparison to the enormous amount of capacity available from many rival firms. Current and potential competitors include not only other satellite and terrestrial facilities-based rivals but also other resellers including, but not limited to, Intelsat distributors and wholesale customers, whose legal rights to resell Intelsat capacity for U.S. international traffic will be unchanged by the transaction.<sup>39</sup> Consequently, the proposed transaction will not confer upon Intelsat any power to foreclose or otherwise harm the robustly competitive U.S. international communications marketplace.<sup>40</sup> In addition, when the proposed acquisition closes, customers will be able to obtain from the newly integrated Intelsat the full range of services that CWS had offered before.

Under its traditional approach to competition analysis, the Commission considers the competitive effects of a proposed transaction on relevant product and geographic markets.<sup>41</sup> With respect to the former, when the FCC last reviewed COMSAT's status as a distributor of

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<sup>39</sup> Under the terms governing its privatization, Intelsat will have no ability to cut off resellers of its capacity simply because it has acquired the CWS business. Moreover, any non-renewals of existing capacity contracts originally taken out with COMSAT will result in that newly available capacity being made available to all customers of Intelsat, including but not limited to its resellers.

<sup>40</sup> In conformity with the Hart-Scott Rodino Act, the Applicants on March 25, 2002 filed notification of the proposed transaction with the Premerger Notification Office of the Federal Trade Commission and with the Antitrust Division of the Department of Justice.

<sup>41</sup> See, e.g., *GE/SES Global Order*, 16 FCC Rcd. at 17593; *Lockheed Martin/COMSAT Order*, 16 FCC Rcd. at 22915.

Intelsat-based satellite services, the agency concluded that the company competed in specific service-oriented markets such as a "switched voice/private line" market.<sup>42</sup> That analysis, however, was performed between 1994 and 1997 and relied on data from that period. More recently, the Commission has suggested that, given the great flexibility of the same satellite capacity to provide multiple services, it is appropriate to conceive of that capacity as a broader product offering.<sup>43</sup>

Regardless of how the relevant service markets might be defined here, there can be no dispute about the intensity of competition for U.S. customer business among the multiple international transmission service providers. As the Commission repeatedly has recognized, global facilities-based providers include a plethora of satellite systems, fiber optic submarine cable systems, and combined cable/satellite offerings.<sup>44</sup> Three years ago, the FCC reported that more than 77 U.S. facilities-based carriers provided a wide array of voice, data, and video services to and from the United States via either satellite or fiber-optic cable.<sup>45</sup> Still more

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<sup>42</sup> *COMSAT Corporation; Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, 13 FCC Rcd. 14083, 14099 (1998) (Order and Notice of Proposed Rulemaking) ("*COMSAT Non-Dominance Order*").

<sup>43</sup> *GE/SES Global Order*, 16 FCC Rcd. at 17591-92 ("[W]e note that many authorized satellite systems are capable of carrying numerous types of signals, including those used for video, telephone, Internet, or data transmission.... Geographic coverage and use of authorized frequency bands are the only limitations on the types of transmission services such satellite systems may provide."). See generally *Availability of Intelsat Space Segment Capacity to Users and Service Providers Seeking Access to Intelsat Directly*, 15 FCC Rcd. 10606 (2000) (Notice of Proposed Rulemaking).

<sup>44</sup> See, e.g., *Intelsat Licensing Order*, 15 FCC Rcd. at 15463.

<sup>45</sup> *In the Matter of Direct Access to the Intelsat System*, 14 FCC Rcd. 15703, 15725 (1999) (Report and Order).

impressive growth in capacity among international facilities-based providers has occurred since then. A July 2001 report by the FCC's International Bureau estimates that global satellite capacity nearly doubled between 1997 and 2001.<sup>46</sup> Indeed, the Commission recognized just six months ago that "there is currently an abundance of satellite capacity," with almost half readily available to customers who may be looking to switch service providers or increase their usage.<sup>47</sup> Current facilities-based providers of fixed satellite services to and from the United States include PanAmSat, SES Global, Loral Space & Communications, Anik, and Hispasat.<sup>48</sup>

Submarine fiber-optic capacity has experienced even more dramatic, exponential growth. According to the International Bureau's estimates, U.S. submarine cable circuits grew from under 1 million in 1995 to 10 million in 2000.<sup>49</sup> The International Bureau's July 2001 report stated that the number of U.S. circuits would soar to approximately 45 million by the end of the year.<sup>50</sup> Recent figures published by the International Bureau also indicate that there is a significant amount of cable capacity available as a competitive alternative; more than 40 percent

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<sup>46</sup> *The U.S. International Services Market; The Transition from Cartel to Competition*, International Bureau Telecommunications Division, at 5, (July 12, 2001) ("*International Bureau Report*").

<sup>47</sup> *GE/SES Global Order*, 16 FCC Rcd. at 17591-92, n.128 (noting a recent report that satellite operators have booked only 55 percent of their fixed service capacity, compared with 68 percent last year).

<sup>48</sup> In addition to these competitors, the FCC's Permitted Space Station List shows that more than a dozen non-U.S. licensed satellites are authorized to compete for U.S. traffic, including those of Eutelsat, Brazilsat, SatMex, and Solidaridad.

<sup>49</sup> *International Bureau Report*, at 5.

<sup>50</sup> *Id.*

of undersea cable circuits were idle in 2000.<sup>51</sup> Given the large amount of fiber optic capacity that Commission records reflect came on line in 2001, the amount of capacity now available to accommodate demand is vast indeed.

Against this background, it is plain that the proposed integration of Intelsat and CWS can pose no threat to competition. The Commission in 1998 determined that COMSAT, when still the exclusive provider of INTELSAT capacity within the United States, faced significant competition from both submarine cables and other satellite systems for 92 percent of its U.S. international traffic.<sup>52</sup> The FCC records also indicate that while both Intelsat and CWS now offer Intelsat satellite capacity within the United States, that circumstance has not significantly increased the total amount of Intelsat-based capacity (whether offered by COMSAT, Intelsat, or various other Intelsat resellers) used to serve U.S. international traffic.<sup>53</sup> Consequently, the integration of Intelsat and CWS cannot have any significant impact on the overall competitive

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<sup>51</sup> FCC International Bureau Report, 2000 Section 43.82 Circuit Status Data (June 2001) at 13, Table 2 (rel. June 29, 2001). The Bureau Report also states that this figure may underreport actual market conditions for a variety of reasons, *see id.* at 4, n. 13, which suggests that the actual amount of available capacity may be higher than 40.6 percent.

<sup>52</sup> *COMSAT Non-Dominance Order*, 13 FCC Rcd. at 14087 (finding in 1996 that 85 percent of COMSAT's revenue from INTELSAT-based offerings was from services for which it faced significant competition); *Comsat Corporation Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, 14 FCC Rcd. 3065, 3065 (1999) (Report and Order) ("Alternative Rate Regulation Order") (finding that percentage of COMSAT business subject to effective competition increased to 92 percent in 1998).

<sup>53</sup> To the degree that Intelsat capacity usage has changed in the U.S. marketplace, it does not appear to be significant in the context of the overall amount of capacity now serving U.S. international communications demand. *See* Letter of Keith H. Fagan, Associate General Counsel, Lockheed Martin Global Telecommunications, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed in IB Docket No. 00-91 (dated Jan. 30, 2001) (reporting that Intelsat's direct customer services then accounted for about 11 percent of U.S. usage of the Intelsat system). More recent internal data indicates that Intelsat's direct customer services account for about 18 percent of U.S. usage on the system.

state of the U.S. international marketplace. In that arena, the only notable marketplace developments that have occurred since the late 1990s have been the explosion in new capacity offered by other transmission facilities, both cable and satellite, and the reduction of foreign barriers to entry under the WTO Agreement.

Because of the competitiveness of the overall marketplace, under Commission precedent the proposed integration of the CWS business into a competitive Intelsat presents no cause for concern. In evaluating such transactions, the FCC examines whether the acquisition will increase the ability or incentive of the acquirer to affect competition adversely in any downstream end-user market by raising costs for its competitors.<sup>54</sup> The agency has determined that an integrated firm's ability to engage in such strategies is substantially reduced when rivals of the merged firm have adequate alternative sources of supply.<sup>55</sup>

Such is plainly the case here. Not only is abundant capacity available on rival submarine cables and satellite systems, but space segment capacity also is competitively available via the Intelsat system itself. As the Commission previously has found, the privatized Intelsat already has contractually committed to non-exclusive arrangements whereby a variety of resellers may obtain Intelsat capacity to compete for, and serve, U.S. customers.<sup>56</sup> This transaction will do nothing to alter the terms of those agreements. Many former INTELSAT Signatories are doing

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<sup>54</sup> *Teleport Communications Group Inc. and AT&T Corp., for Consent to Transfer Control of Corporations Holding Point-to-Point Microwave Licenses*, 13 FCC Rcd. 15236, 15260 (1998) (Memorandum Opinion and Order) ("*Teleport Communications Group*"); *Merger of MCI Communications and Corporation and British Telecommunications plc*, 12 FCC Rcd. 15351 (1997) (Memorandum Opinion and Order).

<sup>55</sup> *Teleport Communications Group*, 13 FCC Rcd. at 15260.

<sup>56</sup> *Intelsat Privatization Order*, 16 FCC Rcd. at ¶ 70.



business in the United States and have rights to distribute Intelsat capacity in providing U.S.-based services, including British Telecom, Cable & Wireless, Teleglobe, and Deutsche Telekom.<sup>57</sup> In addition, more than a dozen other entities also have rights to resell Intelsat capacity in the United States, including Hughes Network Services and Verestar.<sup>58</sup> In short, this record and that of other recent FCC proceedings makes plain that the proposed acquisition will not significantly affect the widespread availability of numerous alternative sources of capacity for various communications services.

With respect to geographic markets, the Commission generally undertakes an analysis "on a country-by-country basis, for service between the United States and specific foreign countries."<sup>59</sup> In deregulating COMSAT four years ago, the FCC focused on broader competitive categories into which individual country-by-country routes may fall, *i.e.*, the so-called "thick" and "thin" routes.<sup>60</sup> As noted above, the agency then determined that COMSAT (and, by definition, Intelsat) wielded no market power on most of the international routes it served. Since that time, the marketplace has become even more competitive as other providers—both satellite

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<sup>57</sup> Others in this category include France Telecom, Entel Chile, Telecom Mexico, Telstra (Australia), Telenor, KDD, Telefonica, and Telespazio.

<sup>58</sup> Others in this category include GE Americom (now part of SES Global), Melbourne International Teleport (MIDL), McKibben Communications, Pittsburgh International Teleport, Ritenet, Spacelink, Telefonica Larga Distancia (TLD), and Voyager Communications. Two entities, Arrowhead Space & Telecom and Artel Communications, use Intelsat capacity in providing services to the U.S. Government. In addition, Lockheed Martin will continue to provide Intelsat-based service to the U.S. government through COMSAT General Corporation and, in the near term, Lockheed Martin Global Telecommunications LLC.

<sup>59</sup> *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd. at 9825; *GE/SES Global Order*, 16 FCC Rcd. at 17593-94; *Lockheed Martin/COMSAT Order*, 15 FCC Rcd. at 22915.

<sup>60</sup> *Comsat Non-Dominance Order*, 13 FCC Rcd. at 14100-101.

systems and, more significantly, submarine fiber-optic cables—have continued to deploy significant amounts of new capacity. For those few routes that were deemed non-competitive four years ago, the Commission decided not to impose traditional, full-fledged “dominant carrier” regulation on COMSAT because the small amount of traffic did not warrant it. Rather, the FCC implemented “alternative incentive-based” regulation.<sup>61</sup> Under these existing safeguards, CWS committed to rate reductions for digital switched voice services and rate caps on private line services.<sup>62</sup> CWS also pledged to lower rates for these services on thin routes in conjunction with any rate reductions implemented on the competitive routes. Intelsat, in integrating CWS into its organization, will comply with the *Alternative Rate Regulation Order*. This action will provide further assurance that the proposed acquisition will impose no anti-competitive harms on the customers that use thin-route services.<sup>63</sup>

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<sup>61</sup> *Alternative Rate Regulation Order*, 14 FCC Rcd. at 3065 (explaining that “[t]he incentive-based approach we adopt today should encourage growth, facilitate productivity improvements, and result in reduced rates to consumers over time. This new incentive-based regulation will be administratively less burdensome as well as more efficient than the existing regulations.”).

<sup>62</sup> *Id.*, at 3071-75. The *Alternative Rate Regulation Order* also addressed a one-time rate reduction for occasional-use television services. *Id.*, at 3075-76. The FCC more recently has authorized the discontinuance of that service offering. *In the Matter of Section 63.19 Application of COMSAT Corporation; For Authority under Section 214 of the Communications Act to Discontinue the Provision of Occasional-Use Television, Occasional-Use IBS Services*, 16 FCC Rcd. 22396 (2001) (Memorandum Opinion and Order).

<sup>63</sup> The Applicants note that this vestige of the old dominant carrier classification derives from two legal regimes that have since been eliminated: Intelsat’s previous status as an IGO and COMSAT’s former status as the exclusive distributor of INTELSAT capacity on U.S. international routes. Neither scenario remains intact today, and approximately two-thirds of the countries on the FCC’s thin route list for switched/private line services have joined the WTO. Nevertheless, although the competitive conditions have changed since the FCC implemented its alternative rate regulation scheme, the Applicants do not seek to alter this regulatory requirement as part of this proceeding.

In short, the international telecommunications services arena is marked by a large number of vigorous competitors, both facilities-based providers and resellers. Explosive growth in undersea cable and satellite facilities has continued to augment the competitiveness of the marketplace by introducing vast new amounts of capacity that is immediately available to accommodate new customers or those who wish to shift existing traffic to pursue attractive service or price options. These factors effectively will forestall any possibility that an integrated Intelsat/CWS could reduce output or raise prices in the U.S. international telecommunications arena. Thus, the integrated Intelsat could not possibly wield market power or otherwise harm the current, flourishing state of competition among U.S. international communications providers. For those few routes that the Commission has categorized as less competitive, Intelsat will be bound by existing safeguards that the agency already has determined serve the public interest.

**B. The Transaction Raises No National Security or Law Enforcement Concerns**

The Commission's public interest evaluation under Section 310(b)(4) includes consideration of potential national security, law enforcement, and public safety issues.<sup>64</sup> Under the *Foreign Participation Order*, the FCC will consult with certain Executive Branch agencies, e.g., the Federal Bureau of Investigation ("FBI") and the Department of Justice ("DOJ"), to identify and resolve potential national security and law enforcement concerns.<sup>65</sup> In certain cases, the FBI and DOJ will negotiate and enter into a network security agreement ("NSA") with the foreign applicant to ensure ongoing law enforcement access to electronic communications

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<sup>64</sup> *Foreign Participation Order*, 12 FCC Rcd. at 23940, 23914-15, 23932-33.

<sup>65</sup> *Id.*, at 23915.

originating or terminating in the United States and address other U.S. national security and law enforcement concerns.<sup>66</sup>

Nevertheless, the Commission and the FBI and DOJ do not insist that all foreign-owned or -controlled applicants negotiate and enter into NSAs. For example, SES Global was permitted to acquire GE Americom without entering into such an agreement, based upon the parties' assurances to the FCC, FBI, and DOJ concerning the limitations of GE Americom's network and licenses—in particular, its absence from the provision of common carrier switched services.<sup>67</sup>

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<sup>66</sup> See, e.g., *Space Station System Licensee, Inc. and Iridium Constellation LLC for Consent to Assignment of License Pursuant to Section 310(d) of the Communications Act*, FCC 02-307, 2002 FCC Lexis 658 (Feb. 8, 2002) (Memorandum Opinion Order and Authorization); *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, 16 FCC Rcd. 20469 (2001) (Order and Authorization); *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd. 9779; *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.; For Consent to Assign Eight C Block Personal Communications Services Licenses and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, As Amended and For Consent to Assign an International Section 214 authorization*, 15 FCC Rcd. 24501 (2000) (Memorandum Opinion and Order); *Vodafone Airtouch, PLC, and Bell Atlantic Corp.; For Consent to Transfer of Control or Assignment of Licenses and Authorizations*, 15 FCC Rcd. 16507 (2000) (Memorandum Opinion and Order).

<sup>67</sup> The FBI and DOJ agreed not to object or otherwise comment in the course of the FCC's review of the parties' application to transfer licenses. DOJ Letter to Mark R. O'Leary, *GE American Communications, Inc.*, (June 12, 2001). The FCC's grant of the GE/SES Global applications incorporated that understanding. Specifically, in a June 4, 2001, letter to the FBI and DOJ, GE Americom represented that it provides domestic dedicated private line service via satellite—in essence, leasing access to satellite transponders—but does not itself provide any domestic switched services. Although some of GE Americom's customers may use leased satellite capacity to offer common carrier services pursuant to their own licenses, GE Americom explained that it does not control, and cannot access, any services provided by its common carrier customers.

GE Americom also noted that it currently held no FCC authorizations to provide common carrier switched services and would have to seek Commission approval before engaging in those services. GE Americom and SES Global agreed to notify the FBI and DOJ at least 30 days before providing any switched services. Intelsat proposes to follow that precedent should it ever  
(Continued...)

Like GE Americom, neither Intelsat nor CWS provides or plans to provide in the near future any switched communications services to end-users. Although CWS leases space segment for voice and data, Internet connectivity and video to common carriers as well as other end users (including governments, multinational corporations, broadcasters, and cablecasters), CWS does not provide any switched services directly to individual consumers. The Applicants therefore believe the record demonstrates that the proposed assignment will not implicate U.S. national security or law enforcement concerns, but their representatives would be pleased to discuss those issues further with the Commission, FBI, or DOJ if warranted. Should it be deemed necessary, the Applicants would be prepared to offer written assurances similar to those accepted in the GE Americom application.

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(...Continued)


seek FCC authorizations to provide common carrier switched services.

V. CONCLUSION

For the reasons set forth above, the proposed acquisition by Intelsat of the CWS business, including the COMSAT licenses and authorizations listed in Attachment 1, would be in the public interest and fully consistent with Sections 214 and 310. Intelsat and COMSAT accordingly request that the Commission consent to these assignments and grant the requested declaratory ruling.

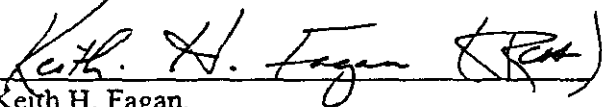
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